IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3428 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MULJIBHAI JAIRAMBHAI PATEL & 2 - Petitioner(s)
Versus
BHAVNAGAR MUNICIPAL CORPORATION & 2 - Respondent(s)

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Appearance :

MR PV HATHI for Petitioner(s) : 1 - 2, 2.2.1, 2.2.2, 2.2.3,2.2.4 - 3.
MR JR NANAVATI for Respondent(s) : 1 - 2.
M/S THAKKAR ASSOC. for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 09/03/2007

ORAL JUDGMENT

1. The petitioners have preferred the petition

for declaration that the layout plan submitted by the petitioners along with the notice dated 16.11.1995 submitted under Section 217 of the B.P.M.C. Act (hereinafter referred to as “the Act”) has become final and binding to the respondent Corporation and the petitioners can develop the land as per the said plan. The petitioners have also prayed for other consequential reliefs to declare that the plan submitted by the petitioners on 16.11.1995 is not affected by the proposed Town Planning Scheme.

2. Heard Mr. P.V. Hathi, learned counsel for the petitioners, Mr. J.R. Nanavati, learned counsel for respondents No.1 and 2 and Ms. Pahwa, learned counsel for respondent No.3.

3. Upon hearing the learned counsel for both the sides, it appears that the contentions of the petitioners is that the plan was submitted on 16.11.1995 by the petitioners under Section 217 of the Act and in view of the proviso under

Section 220 (1), if the decision is not taken in either way by the Commissioner within 60 days from the receipt of the plan, the plan is deemed as approved and therefore, it has been submitted on behalf of the petitioners that the petitioners are entitled to make construction as per the approved plan.

4. It deserves to be recorded that as per Sub-section 2 of the Section 220 of the Act, even if there is a deemed approval by the Commissioner, the person is entitled for making construction within a period of one year from the date of the delivery of the notice under Section 217 to the Commissioner and therefore, the life of deemed approval is for a period of one year from 16.11.1995, which in the present case was upto 15.11.1995. The said period in any case has expired.

5. It does not come on record as to whether the petitioners have made construction pursuant to

the plan submitted on the basis of deemed approval. Mr. J.R. Nanavati, learned Counsel appearing on behalf of the respondent Corporation has submitted before this Court that no construction is made pursuant to the plan and the land has remained as it is. He also submitted that when the Town Planning Scheme was proposed for the land, the petitioners by taking base of the pendency of the present petition, have also raised objection for alteration in the plot and qua Town Planning Scheme.

6. It further appears from the record that after the petition was admitted by this Court on 16.8.1996, on 26.2.1997, the following order was passed :

> “S.O. to 18.3.1997. The petitioner shall be at liberty to move the appropriate authority for N.A. Permission and allied case. It is understood that the petitioner shall not make any construction in pursuance of the plan presented on 16.11.1995.”

7. Therefore, by express order, even construction was not permitted. Therefore, it appears that the construction is not made as per the plan submitted by the petitioners nor it is case of either side that the construction was made pursuant to the plan submitted.

8. In the matter of development of the land, regulations under the laws or bylaws prevailing for such development at relevant point of time will have the relevance and would assume importance for examining the legality and validity of such construction. If the construction is made pursuant to the plan submitted on the plea of deemed approval, it might stand on different footings. Further as observed earlier Section 220 (2) of the Act expressly provides that the life of such deemed approval is for a period of one year from the date of the representation and such period has expired on 15.11.1996. Therefore, as the life of such deemed approval has, in any case, expired

and the petitioners have not actually made construction, the examination of the questions which are raised in this petition, would be academic since, in any case, the period of such deemed approval has expired and no useful purpose would be served by issuing a writ as prayed for by the petitioners.

9. It was lastly submitted by Mr. Hathi, learned Counsel that even after the Town Planning Scheme has come into force, the petitioners may stick to plan submitted on the basis of deemed approval and therefore, he submitted that this court may consider the matter accordingly.

10. I am afraid such contentions can be accepted, more particularly, after expiry of the period of deemed approval and in view of the fact situation that actual construction has not been made during the period when deemed approval was in operation. As observed earlier in the matter of the development of land for making

construction, relevant laws or bylaws or regulations prevailing at the time, when the development is to be made, is to be generally followed and therefore, when the period has expired and no construction is made, the petitioners cannot contend that as on today that the petitioners should be permitted to make construction as per the plan submitted on 16.11.1995, for which period of alleged deemed approval in any case has expired on 15.11.1995.

11. As such in view of the above and considering the facts and circumstances of the case, it appears that on account of expiry of period of deemed approval and as no actual construction is made by the petitioners, no useful purpose would be served in examining the questions and the petition can be treated as having become infructuous by efflux of time. Hence, disposed of accordingly. Rule discharged.

(JAYANT PATEL, J.)

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